'Surya', Shri Rajnath Singh
Swaraj, Shrimati Sushma
Thirunavukkarasu, Shri C.P.
Tohra, Sardar Gurcharan Singh
Topno, Miss Frida
Vahadane, Shri Suryabhan Patil
Vanga Geetha, Shrimati
Varma, Prof. R. B. S.
Verma, Shri Vikram
Vijaya Raghavan, Shri A.
Virumbi, Shri S. Viduthalai
Yadav, Shri Vijay Singh
Zahidi, Shri Khan Ghufran

Noes - 1

Bommai, Shri S.R.

The motion was carried by a majority of the total membership of the House and by a majority of not less than two - thirds of the Members present and voting.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2001

[THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) in the Chair]

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : Now, Shri Arun Jaitley to move the motion for consideration of the Code of Criminal Procedure (Amendment) Bill, 2001.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I beg to move:

> " That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

Sir, this particular amendment to the Code of Criminal Procedure is sought to be introduced into the provisions of section 125 of the Cr.P.C.

There are several crucial amendments which are being made to this provision. This was a provision which was incorporated in the Code of Criminal Procedure for the protection of those family members who are otherwise unable to maintain themselves, namely, wives, children and aged parents. In the year 1955, the maximum amount that could be paid to them was fixed and that amount was Rs.500. In 1973, when we incorporated the new Cr.P.C., we continued with the same amount. So, this amount has been continued for more than 45 years. On account of the increase in the cost of living there have been repeated demands and suggestions that the amount be increased. In fact, the Law Commission, at one stage, had suggested that this amount be increased to Rs.5,000. The Government took those factors into consideration and took an opinion that since it had to be fixed by judicial orders, it must be in consonance with the requirements of the wives, children and aged parents as also the paying capacity of the husband or the son or the father, as the case may be, there was no need to maintain that cap of Rs.500. Therefore, that cap of Rs.500 is sought to be removed.

The other amendment is that there was an ambiguity whether there was a provision for payment of interim maintenance under this provision or not, the judicial opinion, at some stage recently, was that the interim directions were also being passed. But that has been clarified by a specific amendment that the interim maintenance can also be paid under these provisions. Just as we approved the Marriage Laws (Amendment) Bill, yesterday, there is a corresponding amendment in this Bill also that the interim maintenance amount be directed to be paid, as far as possible, within a period of 60 days from the service of the notice of the application to a person who is liable to pay this amount. There is also a clarificatory amendment to the effect that the maintenance would not only cover the maintenance amount but also the expenses of the proceedings themselves. There are corresponding changes which are suggested to sections 127 and 128 on account of these amendments.

I propose to this august House that this Bill be taken up for consideration and be passed.

The question was proposed.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The motion is now open for discussion. Shri B.P. Singhal.

SHRI B.P. SINGHAL (Uttar Pradesh): Mr. Vice-Chairman, Sir, these amendments are actually natural concomitants that must follow the devaluation of the rupee. I don't suppose that there is much to discuss in this respect. I support the amendments.

PROF. (SHRIMATI) BHARATI RAY (West Bengal): Mr. Vice-Chairman, Sir, I appreciate the Bill that has come before the House. I must thank the hon. Law Minister for bringing a progressive legislation. Since he has brought this Bill showing concern for the helpless wives, children and aged parents, which is important, I want to suggest some amendments. The first point is that the concept of shared household is very important. It seeks to prevent women, dependent parents and children from being dispossessed from their shelter and from domestic violence. A provision should be made so that the wives and their dependent parents and children can stay in the marital home or house which they shared together and cannot be thrown out. If they are thrown out, they can be put back. That right should be there. This is one point.

The second point is that a man can always understate his income. A wife often does not know the amount of her husband's earnings.

Therefore, while deciding the amount of maintenance, the husband's lifestyle should also be taken into account. The third and the most important point which I would like to make is that, there should also be an easy way of recovering the amount of maintenance, because the husband often evades orders, and another legal suit will be necessary to force him to pay the maintenance. I suggest that a mechanism for attachment of his salary should be there. This would make it easier for the complainant to get the compensation. With these words, I conclude. Thank you.

श्रीमती सरोज दुबे (बिहार) : माननीय उपसभाध्यक्ष महोदय, मैं कोड आफ क्रिमिनल प्रोसीजर(संशोधन) विधेयक, 2001 का तहेदिल से स्वागत करती हूं और इसका समर्थन भी करती हूं क्योंकि यह देश के कोने कोने से महिला संगठनों की भी मांग थी। मेरा भी प्राइवेट मैम्बर्ज़ बिल गुजारा भत्ता राशि बढ़ाने और उसकी सीमा तय करने से संबंधित बहुत दिनों से सदन में पेंडिंग है। लेकिन मंत्री जी यह संशोधन लाए हैं, इसके लिए मैं उनकी खुले दिल से प्रशंसा करती हूं।

इस संशोधन के माध्यम से आपने पीड़ित महिला के हाथ में एक ऐसा सम्बल थमा दिया कि गुजारा भत्ता की न्यायिक प्रक्रिया का जो दुरुह मार्ग है, वह इस सम्बल के सहारे बहुत दूर तक जा पाएगी, अपनी मंजिल तय कर पाएगी, ऐसा मेरा विश्वास है। आपने पांच सौ रुपये की अधिकतम सीमा को हटाया है। यह बहुत ही अच्छा कदम है क्योंकि आज के दिन में पांच सौ रुपये के कोई मायने नही होते हैं। पहले पांच सौ रुपये अधिकतम सीमा थी, वह पांच सौ रुपये भी कोई पूरे नहीं देता था। मैंने उन महिलाओं को भी देखा है जिनको 40 रुपये गुजारा भत्ता मिला करता है, किसी को 80 रुपये गुजारा भत्ता मिला करता है। इसलिए जब आपने सीमा हटा दी है, अधिकतम सीमा हटा दी है, यह बहुत ही अच्छा काम किया है वरना एक धनवान और एक रिक्शा वाला और एक शिक्षक तीनों ही पांच सौ रुपये की सीमा में बंधे रहते थे। दूसरा जो 60 दिनों के अन्दर गुजारा भत्ता देने की, समय सीमा तय की है, इसमें मैं दोनों तरफ से बोलना चाहूंगी। अगर महिलाओं के पक्ष में मैं बोलना चाहती हूं तो मैं यह कहूंगी कि 60 दिन की समय सीमा बहुत अधिक है, दो महीने का समय बेघर होकर काटना महिलाओं के लिए बहुत ही कठिन हो जाता है। इसलिए इसे घटा कर के एक महीने के लिए कर दिया जाए। अगर मैं कानूनी प्रक्रिया के तहत इस बात को कहना चाहती हूं तो मैं यह कहना चाहूंगी कि यह 60 दिन का समय और आपकी जो न्यायिक प्रक्रिया है, इसकी गति अति धीमी है इसमें सम्मन निकलते निकलते बहुत देर लगती है। सम्मन को पहुंचाना तामील कराना कठिन कार्य है क्योंकि हज़बैंड सम्मन लेता ही नहीं है, फिर उसके बाद ले जाने वाले भी पति से मिल जाते हैं, सब की मिलीभगत हो जाती है। नतीजा यह होता है कि सम्मन तामील हो ही नहीं पाता है और 60 दिन की सीमा के भीतर यह संभव हो नहीं पाएगा। उसके बाद जजेज़ की कमी होती है, कोर्ट नहीं बैठती है,कभी वकील बीमार हो जाता है, तमाम ऐसी बाधाएं हैं जो 60 दिनों के समय के अन्दर पूरी नहीं हो पाएंगी। मैं यह चाहती हूं कि कोई ऐसा अतिरिक्त ढांचा बनाने का प्रावधान रखें ताकि इन 60 दिनों के अन्दर यह सारी न्यायिक प्रक्रिया पूरी हो पाए। अगर ऐसा नहीं हो पाता है तो एक्स पार्टी इंटेरिम आर्डर करना चाहिये ताकि सम्मन का कोई झंझट ही नहीं रहे। जब महिला का कोई आवेदन पत्र आए उसके बाद उसको एक्स पार्टी इंटेरिम मैंटेनेंस मिल जाए और जब उसका नोटिस उसके पास जाएगा तो उसका पति या पिता जो भी होगा कोर्ट में गुहार करेगा और उसको कोर्ट में न्याय मिल जाएगा। इस तरह से मैं यह भी कहना चाहती हूं कि 60 दिन की प्रक्रिया में आपको एक्स पार्टी इंटेरिम आर्डर कर देना चाहिये नहीं तो 60 दिन के अन्दर कानूनी प्रक्रिया पूरी नहीं हो पाएगी। जैसे कि आपको मालूम है एक एक दिन में दो दो चार चार सौ एप्लीकेशंस आ जाती हैं, कितने केस पेंडिंग पड़े हुए है। इनको कौन सुनेगा। अगर वृद्ध माता पिता हैं तो वह भी कुछ नहीं कर पाएंगे। बच्चा है उसकी बात तो दूसरी है। क्योंकि पुरुष की और पति की यह धारणा होती है कि महिला को आर्थिक रूप से विकलांग बना दो, वह कुछ भी नहीं कर पाएगी। इसलिए मेरा आपसे अनुरोध है कि अगर एक्स पार्टी इंटेरिम आर्डर करने का कोई प्रावधान इस में ले आएं तो कम से कम जैसे ही महिलाएं घर से बाहर मिलें, 15-20 दिनों में उनको कुछ लम्प-सम गुजारा भत्ता मिल जाए ताकि वह अपना अगला जीवन सुधार पाए।

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : धन्यवाद। और भी आपका कुछ है। आपका समय हो गया है। समय काफी हो गया है उससे।

श्रीमती सरोज दुबे : दो तीन और बातें बोलना चाहती हूं जो मैं पिछली बार भी बोल चुकी हूं, फिर भी मैं अपनी बातों पर स्टैंड करती हूं कि महिलाओं की सबसे बड़ी समस्या होती है जैसे कि उन्होंने इंटरिम भत्ते का जब आवेदन पत्र दे दिया तो उन्हें यह साबित करना बहुत मुश्किल हो जाता है कि वे उनकी पत्नी हैं। शादी ही नहीं साबित हो पाती है तो गुजारा भत्ते की बात ही दूसरी होती है।

दूसरा जैसे पति-पत्नी में अनबन होती है, वह घर से बाहर जाती है, पति अपनी बेरोजगारी सिद्ध करने लगता है। इन सारी बातों को साबित करने के लिए भी महिलाओं को बहुत दिक्कत होती है। कुछ आपको न्यायिक प्रक्रिया में ऐसा लाना चाहिए कि कोर्ट की तरफ से जांच पड़ताल हो कि पति की आमदनी कितनी है, वह शादी-शुदा उसकी पत्नी है। इन दो बातों को साबित करने के लिए पत्नी को बहुत ही मुश्किल उठानी पड़ती है।

तीसरी बात, मैंने यह कही थी कि अगर पति-पत्नी का झगड़ा होता है हालांकि माननीय मंत्री जी उसको अच्छी तरह से नहीं मान पाए - लेकिन फिर भी मैं अपनी बात पर स्टैंड करूंगी..

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : वे सब बातें याद रख रहे हैं।

श्रीमती सरोज दुबे : मैं फिर कहूंगी कि अगर पति-पत्नी का झगड़ा होता है वे एक घर में रहते हैं तो पत्नी को घर छोड़ने के लिए विवश नहीं होना चाहिए। वह भी उसी घर में रहे। आधे घर में वह रहे और आधे घर में पत्नी रहे। इसका प्रावधान होना चाहिए। अगर उसकी जान को खतरा है, वह रिपोर्ट करती है तो उसको पुलिस प्रोटेक्शन मिलना चाहिए। यह क्यों घर के बाहर जाए जब समानता का दावा है। जब पुरुष और स्त्री उसी समानता के दावे पर रह रहे हैं, पति-पत्नी एक घर के दो पहिए माने जाते हैं फिर महिला क्यों घर से निकलकर जाए, क्यों नहीं पुरुष घर से निकलकर जाए। कुछ ऐसे भी उदाहरण देखे जाते हैं कि पुरुष निकाल दिया गया। लेकिन ऐसा नहीं होता है। इसलिए मैं यह कहना चाहती हूं कि इस बात पर जरूर ध्यान दें क्योंकि आपका गुजारा भत्ता दो महीने बाद मिलेगा तब तक जो महिला, जो परित्यक्ता है उसको कोई अपने घर में शरण नहीं देता है। वह अपने बच्चों को लेकर भटकती रहती है, न उसको शार्ट स्टे होम में जगह मिलती है, न कहीं और जगह मिलती है। उसकी बड़ी दयनीय स्थिति हो जाती है और अपनी इज्जत बचानी मुश्किल हो जाती है। पति अपने पैसे के दम पर उसको धमकाता रहता है कि चुपचाप गांव वापस चली जाओ नहीं तो तुमको जान से मार दूंगा, तुम्हारे बच्चे उठवा दूंगा। इस तरह की आफतें आती रहती हैं।

चौथी बात, मैं फिर कहना चाहूंगी कि जब पत्नी को घर से निकाल दिया जाता है तो उसके सामाजिक सम्मान में क्षति होती है। उसको मानसिक आघात पहुंचता है। इसलिए इस मानसिक आघात और सामाजिक सम्मान की जो क्षतिपूर्ति है उसका भी एक प्रावधान होना चाहिए कि हम इज्जत से रह रहे हैं और कल आपने हमको सड़क पर भेज दिया। जैसे अगर कोई एक्सीडेंट होता है तो उसकी क्षतिपूर्ति की जाती है तो महिलाओं को जो मानसिक आघात पहुंचता है उसकी क्यों नहीं क्षतिपूर्ति की जाए। उसकी क्षतिपूर्ति का भी एक प्रावधान किया जाए। साथ ही साथ एक और बहाना लगा दिया जाता है। वह कहीं 200 रुपए महीना भी पा रही है, एक छोटे से

प्राइमरी स्कूल में टीचर भी है तो तुरंत कह दिया जाएगा कि यह तो रोजगार पा रही है। यह भी ध्यान में रखना चाहिए कि अगर उसको कहीं छोटी सी तनख्वाह मिल रही है तो उसमें गुजारा भत्ता रोकने की कोई जरूरत नहीं है क्योंकि 200 रुपए में उसका क्या होता है। पति के साथ जिस स्टैंडर्ड में रहती थी, जिस लाइफ स्टाइल से भारतीय जीवन था, जिस लाइफ स्टाइल से पति के घर में रहती थी वैसे ही रहने लायक गुजारा भत्ता देना चाहिए क्योंकि इसमें मैजिस्ट्रेट को अथाह पावर मिल जाती है कि वह कुछ भी कर सकता है ...**(समय की घंटी)**... इतनी जल्दी न करें, हम खत्म कर रहे हैं। महिलाओं का मामला होता है तो आप लोगों को बहुत जल्दी हो जाती है।

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : पुनः धन्यवाद, सरोज जी। आप समय को देखिए। दो मिनट से इतना ज्यादा हो गया है।

श्रीमती सरोज दुबे : इन बिलों का भी वही हश्र होगा जैसे आज तक इतने कानून महिलाओं के लिए बनाए गए हैं।

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : आपकी सब बातों का वे जवाब देंगे। थोड़ा समय का ध्यान रखिए।

श्रीमती सरोज दुबे : सारी बातें बनायी गयी हैं...**(व्यवधान)**... नहीं हम विरोध कहां कर रहे हैं। उसी तरह से जैसे आज तक महिलाओं को समान वेतन नहीं मिल रहा है तो वैसे ही इसमें भी हो जाएगा क्योंकि जो 60 दिन की समय सीमा है उसमें है - यथासंभव। इसमें लिखा है कि जहां तक संभव हो। जहां तक संभव हो - वाली लाइन लेकर पति गायब हो जाएगा। कभी वह समय पर नहीं होगा, कोई मेन्टिनेंस नहीं मिलेगा। 60 दिन की समय सीमा का मखौल उड़ेगा। पत्नी और वृद्ध माताएं बेचारी वैसे ही परेशान होती रहेंगी।

आप जो यह बिल लाए, बहुत अच्छा है, एक कदम आपने उठाया है। हम लोगों की बहुत दिनों से मांग थी। मैंने बताया कि मेरा भी प्राइवेट मेम्बर बिल पेंडिंग है। इसलिए आपने बहुत अच्छा कदम उठाया है। मैं खुले दिल से इसका स्वागत करती हूं। लेकिन आप मन में यह सोच लें कि ये जो बातें हैं, ये हम लोग जो सुझाव दे रहे हैं, ये अपने मन से नहीं दे रहे हैं, हम लोग इस आंदोलन को 20-25 साल से चला रहे हैं। तो उस आंदोलन के आधार पर मैं आपको बताना चाहती हूं। इसलिए इन बातों पर भी आप विचार करें। आप प्रगतिशील विचारधारा के हैं और मुझे यह लगता है कि महिलाओं को कुछ आप समानता देना चाहते हैं। इसलिए इन बातों के लिए भी आप कुछ आश्वासन दें कि तुरंत आप कोई व्यापक संशोधन लाएंगे ताकि महिलाएं भी समाज में बराबरी का दावा कर सकें, सम्मान के साथ जी सकें।

इन्हीं शब्दों के साथ मैं आपके इस संशोधन का स्वागत करती हूं, समर्थन करती हूं।

SHRIMATI VANGA GEETHA (Andhra Pradesh): Sir, I rise to support this Bill. I congratulate the Government for its progressive decision to amend section 125 of the Criminal Procedure Code.

It has been our experience that when a woman files an application in a court for maintenance, she has to wait for years together for getting relief from the Court. She is put to a great mental agony and financial difficulty till the court grants her some allowance. Keeping the difficulties of women in view, the Government has come forward with this amendment.

The objective of the amendment is to ask the husband, who is an earning member of the family, to share certain amount or pay certain amount to his wife and children who are dependent on him. This section was introduced to ensure minimum social security to the dependents. The cost of living is increasing day be day. Keeping in view the rising cost of living, now it is proposed that the Magistrate can order payment of a reasonable interim maintenance allowance and expenses on court proceedings.

The court's order would come within 60 days of the notice. In order to achieve the objective, this clause further contemplates that a minimum amount of Rs. 500/- can be granted towards maintenance by the courts. As a matter of practice, since the Act contemplates Rs. 500/- most of the courts are awarding less than Rs. 500/- and sometimes even less than half the amount. So, the dependents are facing a lot of hardships. Now the ceiling is being removed and the courts are being given a free hand to award suitable amount towards maintenance. It is a welcome step.

I would like to make one or two suggestions. This law should be amended further. If an appeal is filed, the same should be entertained only on payment of 50 per cent of the amount awarded and no Appellate Court should grant a stay till 50 per cent of the awarded amount is deposited. It will also be advisable to put a time limit for disposal of applications filed under section 125 of the Criminal Procedure Code. The trial courts should be made accountable to the concerned portfolio judge of the High Court in case the trial court fails to dispose of the application within the stipulated time.

I would like to appeal to the Government to amend various provisions relating to matrimonial disputes. There is a need to adopt a comprehensive approach towards matrimonial problems.

Failure of marriages should not be viewed as a problem of individuals but it should be treated as a problem of the society at large. Thank you.

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): I welcome this Bill which has been brought by the Law Minister. The salient feature of this Bill is, application of maintenance can be fixed by the First Class Magistrate. Now courts are available to citizens in every corner. So far as criminal cases are concerned, the fee that has been fixed is only 75 paise. They are not charging *ad valorem* court fee. Cheap remedy is available to all the citizens irrespective of caste and creed. Anyone, whether he is a Muslim or a Jain or a Hindu or an Anglo Indian can approach the Criminal Court and ask for remedy. Irrespective of the religion, the maintenance is being granted by the court, provided it is summary in nature, and it can be disposed of as quickly as possible, and there is no possibility of any delay in these matters. So, taking into consideration these facts, even in the year 1886, when the CrPC was framed, the English people had incorporated these provisions into the Act. As far as the interim maintenance is concerned, the Supreme Court has said -- and the High Courts have granted interim maintenance for some time -- the magistrates have no power at all to grant interim maintenance. Taking that fact into consideration, the Law Ministry has incorporated those provisions of interim maintenance into this Act. Sir, I have only one suggestion. As far as interim maintenance is concerned, if the Court has granted interim maintenance, there should not be any revision before the appellate court. That should be incorporated; otherwise, they will file an application before the High Court -- and other proceedings -- and get a stay. As far as enhancement of maintenance is concerned -- provisions of section 127 of CrPC -- the enhancement means, if there is a rise in the price index, automatically, the maintenance is enhanced --should be granted, as quickly as possible.

Sir, with respect to the provisions of section 127, I would like to say that the litigation would be dragged on, if they are allowed to ask for enhancement of interim maintenance also. Clause 3(1) of the Bill states, "On proof of a change in the circumstances of any person, receiving, under section 125, a monthly allowance for the maintenance or interim maintenance, or, ordered, under the same section, to pay a monthly allowance for the maintenance, or interim maintenance..." So, if a person is receiving interim maintenance by virtue of an order of a court, when the interim maintenance continues to be paid, he can ask for enhancement of the interim maintenance. This will create a lot of delay in disposing of the proceedings. So, what I suggest is, if, for the disposal of the main application itself, a time is fixed -- the main application should be disposed

of within a period of six months or within a period of one year -- there is no necessity to take another enhancement of interim maintenance during that period. So, section 127 will really create a lot of confusion, as far as the lower courts are concerned. Once a person obtains an interim maintenance order, after one month, he will file another application for enhancement of interim maintenance. So, it is better to fix a time for it. The application should be disposed of within a period of one year, and there should be no enhancement of interim maintenance in the interim period. I welcome this Bill. It is a good Bill.

SHRI KAPIL SIBAL (Bihar): Mr. Vice-Chairman, Sir, I commend the Minister of Law for having moved an amendment to section 125 of the Criminal Procedure Code. The fact that such an amendment has been moved after more than 45 years, is itself a proof of the fact as to how we have been very callous in our response to the needs of those destitute women who were entitled to a much higher level of maintenance. Though I support the Bill, I am very surprised by the fact that the provisions do not go far enough. The first point that I wish to make is that -- of course, the monthly allowance limit has now been done away with -- the new amendment says that for an application of maintenance, when it is filed in a court, or an order is passed on that application, maintenance will start either from the date of the order or from the date when the application is made. For me, this is very strange. Supposing, a destitute woman takes a couple of years to actually go to a court of law and seek maintenance, because, in a male-dominated society, a large number of women, in fact, don't know where to go. It takes a long period of time for them to get in touch with an advocate, and then they have to arrange for the means to pay that advocate, and then move a court of law. Sometimes, 4-5 years pass; the husband has left her high and dry and she has no means of livelihood; the amendment that is being proposed is that the maintenance would be granted to the wife either from the date of the order or from the date when the application is made. The right of maintenance can't, possibly, be connected to the date when you move the court. It can't be connected to the date when you file an application or the day the judge decides to give you the order. A woman is entitled to maintenance the day the husband decides not to maintain her. You can't say that that entitlement will go away merely because she has chosen to move the court after two years. I request the hon. Minister to look into this matter, because it would be very unfair for a woman to get this right only from the date when the judge decides to pass an order or from the date when she makes the application. That is the

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first point that I wish to state before this House; or, alternatively, you can have a provision like in respect of arrears, sometimes; you have a provision that beyond three years, you can't ask for that. You have a specific provision for mean profits; the hon. Minister knows that unless you make an application, you will not get mean profits for more than 3 years of your entitlement. Well; if within a period of three years, the wife asks for maintenance, then three years prior to the date of application--at least that--she should be entitled to. I think, again, we are committing the same folly; we are not applying our minds to the needs of that class of society which requires to be protected by us. That is point number one.

The second point that I wish to make is on the recently added proviso; the second proviso suggests that the application for maintenance or interim maintenance should be disposed of within sixty days, as far as possible. Sir, the experience that we have in the courts of law is, even in parallel statutes, there are provisions of this nature; those applications are not disposed of within a period of 60 days. The language mentioned here is, 'as far as possible.' You know, and the hon. Minister knows, Sir, how adjournments are taken and how matters are delayed from time to time and months pass before the applications are disposed of. I wish, there had been a provision here which said, "if the learned judge can't pass an order within sixty days, the learned judge should pass a speaking order to that effect so that he explains his inability to pass an order within sixty days and gives reasons for that so that those reasons can be judged in a court of appeal or a court of revision." That is the second suggestion I have for the hon. Minister, which he might wish to look at.

The third and the last one I have is, there is a power to appeal against an order either on interim maintenance or a final order, either in revision or in appeal. Since this is in the nature of a money decree, my suggestion is that an order passed by the trial court, in respect of an interim maintenance or monthly allowance, should not be stayed, pending the final decision on the appeal. I don't agree with the suggestion that there should be no appeal or there should be no revision. There should be. But there should not be a stay of that original order, either for the grant of interim maintenance or monthly allowance that protects the women, that entitles her to receive the paltry amount that women generally get. This is the experience we all have. Just orders in this regard are seldom passed.

These are the three specific suggestions that I have for the hon. Minister. I am sure; the Minister would consider these. Thank you.

6.00 P.M.

श्री जनेश्वर मिश्र (उत्तर प्रदेश) : उपसभाध्यक्ष महोदय, मैं सबसे पहले यह साफ कर दूं कि विधि मंत्री जी ने जो बिल पेश किया है, मैं उसका तहेदिल से समर्थन कर रहा हूं। महोदय, यह बिल तो मामूली सी चीज है। नर-नारी समता का सपना देखने वाले जितने लोग हैं, उन लोगों में एक छोटा सा आदमी मैं भी हूं। उस बड़े लक्ष्य को प्राप्त करने के लिए इस बिल के कोई मायने नहीं होते हैं लेकिन कभी-कभी कानून की नीरस धाराएं समाज के कमजोर वर्ग के लोगों को थोड़ा-बहुत सहारा दे दिया करती हैं, इसलिए मैं इस बिल का समर्थन कर रहा हूं।

महोदय, मैं जानता हूं कि मर्द-औरत के रिश्ते कानून के नीरस रिश्ते नहीं होते हैं, वे जज्बाती रिश्ते होते हैं, उनमें भावनाएं होती हैं, कई किस्म की भावनाएं होती हैं। औरत केवल पत्नी नहीं होती, बेटी भी होती है, मां भी होती है। उन भावनाओं को कानून के दायरे में नहीं बांधा जा सकता और अगर हम बांधने की कोशिश करेंगे तो बहुत से लोग उन भावनाओं के चलते कानून के मायने नहीं समझ पाएंगे।

महोदय, हमारा देश बहुत प्राचीन देश है। यहां महिला केवल आज ही नहीं सताई जा रही है। मैं अरुण जेटली साहब से और इनकी पार्टी के लोगों से कहना चाहता हूं कि राम ने भी सीता को अपने घर से निकाल दिया था। बेचारी एक साधू के आश्रम में रूखी-सूखी रोटी खाकर रह गई। साधू अच्छा था, इसलिए खाना मिल गया और बच्चों का पालन-पोषण हो गया। उस समय से आज तक पुरुष प्रधान समाज महिलाओं पर जुल्म करता आ रहा है। राम के ज़माने में गुज़ारे-भत्ते के लिए कोई कानून नहीं था वरना जिस दिन उन्होंने निकाला था, उसी दिन अयोध्या का राज्य आधा-आधा हो गया होता। उन्होंने बरदाश्त कर लिया। यह तो पुरानी बात हो गई है। आजकल के समय में भी अगर औरत का पति मर जाए तो उसका सामान घर से निकालकर बाहर फेंक दिया जाता है। महिलाओं से मैं कहना चाहूंगा कि कहीं-कहीं आप भी सत्ता में हुआ करती हैं। सरोज जी, कल को आप अपने बेटे की बहू की सास बन जाएंगी। आजकल इस सरकार में एक मिनिस्टर हैं, एक सास ने जो पावर में थी, उस बहू का सामान अपनी कोठी से बाहर फिंकवा दिया। मैं किसी का नाम नहीं लेना चाहूंगा, मेरे कांग्रेस के मित्र मुझे क्षमा करें। लेकिन उनकी बहुत बड़ी ताकत थी, उन्होंने अपनी बहू का सामान कोठी से बाहर फिंकवा दिया। तो इस प्रकार कहीं-कहीं महिलाएं भी महिलाओं पर जुल्म किया करती हैं। अगर पति मर गया तो उस महिला का क्या होगा, हम नहीं जानते कि इस कानून के दायरे में वह बात आएगी या नहीं, आनी चाहिए क्योंकि जो जहां सशक्त है, सुविधा-संपन्न है, वह निचले वर्ग को सताने की कोशिश करता है, कमजोर को सताने की कोशिश करता है और यह केवल पुरुष ही नहीं करता, यह सास भी करती है, महिलाएं भी करती हैं।

मैं उन महिलाओं से जो बहुत अधिकार मांगती हैं, केवल इतनी ही अपील करूंगा कि ठीक है, अधिकार आप लो, हम तुम्हारे समर्थक हैं लेकिन आपसे कमजोर महिला का भी कुछ अधिकार है, उससे उसको वंचित करने की कोशिश न करना। जस्टिस मिश्र जी यहां बैठे हैं, उनसे और अरुण जेटली साहब से मैं यह कहूंगा कि जो लोग कानून के बारे में निर्णय दिया करते हैं, मैं "इंसाफ" नहीं कह रहा हूं, मैं केवल "निर्णय" कह रहा हूं, "इंसाफ" और "निर्णय" में फर्क होता है, एक हाई-कोर्ट का फैसला मैंने अखबार में पढ़ा ..... अपनी पत्नी के रहते हुए अगर

कोई मर्द दूसरी औरत से कोई रिश्ता बना लेता है तो इसमें कुछ भी बुरा नहीं है। निर्णय देने वाले लोगों से जिनको हम लोग जज कहते हैं और जिनका हम सम्मान करते हैं इंसानी रिश्ते और उसके जजवातों को समझना चाहिए। इस कानून के दायरे में यह बातें आ नहीं पाएंगी। क्योंकि कुछ बातें कानून से तय नहीं हुआ करती। लेकिन हम जरूर चाहेंगे कि इस कानून के मार्फत समाज को इतना मजबूत बनाने की कोशिश की जाए कि समाज में जो एक बहुत बड़ा कमजोर वर्ग है - नर-नारी समता शब्द का इस्तेमाल मैंने किया, मैं जानता हूं कि दौलत की समता की लड़ाई लड़ कर जीती जा सकती है, पैदायश के आधार पर गैर-बराबरी के खिलाफ लड़ाई लड़ कर जीती जा सकती है, धर्म सम्प्रदाय या भाषा के सवाल पर गैर-बराबरी के खिलाफ लड़ाई लड़ कर जीती जा सकती है, क्षेत्रीयता, क्षेत्रीय विषमता के खिलाफ लड़ाई लड़ कर जीती जा सकती है लेकिन मर्द-औरत के बीच में हक की लड़ाई लड़कर के जीतने में बहुत वक्त लगेगा, तब भी मेरे जैसा आदमी यह मान कर चलता है कि कभी न कभी यह लड़ाई जीती जाएगी और यह कानून उस लड़ाई को जीतने में जो समाज के वंचित वर्ग के लोग और कमजोर वर्ग के लोग हैं उनको थोड़ी सी ताकत देगा। सम्पूर्ण लड़ाई को इस कानून से नहीं जीता जा सकता। आपको धन्यवाद उपसभाध्यक्ष महोदय।

SHRI N.K. PREMACHANDRAN (Kerala): Sir, I fully welcome and support this Bill. I would like to congratulate the hon. Law Minister for bringing this Amendment. Though it is a very simple piece of amendment, it is helping lakhs of destitute women in our country. Since so many decades, the maximum maintenance allowable under the law is only Rs.500. Removal of the ceiling itself under section 125 of the Cr.P.C will help the poor, destitute, women. I would like to congratulate the hon. Law Minister because he is making sincere efforts in bringing so many amendments which are beneficial to our women. I would like to urge upon him to bring in more amendments to the Cr.P.C. Because, as everybody knows, justice delayed is justice denied and there are a lot of procedural delays. We can overcome these procedural delays if more efforts are made in this regard. I would appreciate the steps taken by the hon. Minister in enhancing the amount of maintenance and also bringing in a new provision with regard to interim maintenance. Regarding the time span *i.e.*, sixty days, -- it has already been pointed out by the learned counsel, Shri Kapil Sibal -- I fully support the learned counsel. Mr. Sibal had made three points. The period of getting maintenance...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): He is not only a learned counsel, but also our distinguished colleague.

SHRI N.K. PREMACHANDRAN: I admit that. I also support the provision of interim maintenance. There has to be some time stipulation as

far as payment of maintenance is concerned. Otherwise, the judicial authorities concerned prolong the issue, according to their wish. Also, amendments to section 127 and 128 have to be brought in. The main problem in the magistrate courts is execution. First, we have to file for maintenance, under section 125, and then orders will be passed. But it is very difficult to realise that amount. For this, we have to file a Criminal Miscellaneous Petition and then a warrant would be issued. If a warrant is issued, it is very difficult to execute it. And, what is ultimate result? The result is: Only to get Rs. 100 or Rs. 200 p.m., the destitute women have to put in more efforts and bear much more cost than the actual maintenance that she is going to get. These are all matters in regard to which appropriate amendments are required. With these words, I once again support this Bill. Thank you.

SHRI FALI S. NARIMAN (Nominated): Mr. Vice-Chairman, Sir, I must congratulate the hon. Minister as, during this entire week, he has been a bearer of good tidings. First, we had the Marriage Laws (Amendment) Bill; then, the Advocates' Welfare Fund Bill; now, this Bill; to be followed by the Divorce (amendment) Bill. He should be congratulated, particularly, because all these Bills do rise above partisan politics and respond to the genuine needs of society and make our sojourn here somewhat worthwhile. There are two points that I would like to make with regard to this Bill. I entirely support this Bill. I also concur in the sentiments expressed by my hon. colleague, Shri Kapil Sibal. He has made two very very important points. It is really a part of that saying that "You can bring a horse to the river, but you cannot make him drink." What will you do if the magistrate does not pass an order even after 60 days? Therefore, it is a very good point that a reasoned order should be given by the magistrate as to why he could not pass an order. That would be a sufficient incentive for him to pass it. The second point he made is with regard to the stay. There should be no stay by the higher court, except for reasons to be recorded in writing. That again is a sufficient deterrent for a court to grant a stay. But, Sir, I have intervened in this debate, particularly, to support the amendment moved by Smt. Bharati Ray. Conceptually, it has its basis in jurisprudence, a jurisprudence established by the great judge, Lord Denning, long years ago. If you recall, in England, a number of soldiers died during the war. They could not come back home. Their wives were visited with a large number of eviction orders from landlords. As a result of which, Lord Denning, who was then greatly respected, and still he is greatly respected in

the Commonwealth, devised what he called the Equity of the Matrimonial Home. It is a very important concept. Through this concept, he prevented these eviction orders. The House of Lords overruled it. But he was undeterred. He said "my head is bloody, but unbowed", and he went on doing, nevertheless. Ultimately, the British Parliament had to intervene and it introduced the Matrimonal Homes Bill which protected the matrimonial homes. This is the basis of the concept of Mrs. Bharati Ray with regard to the shared households, which I very strongly support. Whether you accept it as an amendment or you bring a separate Bill, it is for you to decide. It requires to be looked into seriously, particularly, because, under its provisions, the Magistrate is empowered to give a protection order immediately after an application is made, namely, to protect the women from being evicted from the matrimonial households. This is very very important for women who live in the big cities where they just cannot go anywhere. It is a very important measure of social reforms. I would respectfully suggest that the hon. Minister should seriously look into it.

SHRI KAPIL SIBAL: Mr. Vice-Chairman, Sir, I am entirely in agreement with what my learned friend has said. I urge upon the hon. Minister to bring a separate piece of legislation to protect the women from being evicted from their matrimonial homes.

SHRI FALI S. NARIMAN: Yes, Sir, this is very important because it is based on jurisprudential concept, and that concept must be strengthened. In what form you should bring it, Smt. Bharati Ray has already suggested it, but, of course, it has to be vetted, etc. The hon. Minister may kindly look into this and devise some method by which, at the earliest possible time, we could have this particular measure. It would be very helpful for the women in large cities. In conclusion, I support this Bill. Thank you.

SHRI V.V. RAGHAVAN (Kerala): Thank you, Mr. Vice-Chairman, Sir. I rise to support this Bill and I would like to express my concerns about the Muslim women. Sir, the Muslim Law "Sharriyat" permits the husband to divorce the wife at his will, and the court legalises this divorce according to the law 'Sharriyat'. How can the women folk approach the court and get these benefits which are available? You know the history. But I do not know how to legalise these things. When we legalise the divorce according to the Muslim Law 'Sharriyat', then our Muslim sisters are driven to pathetic conditions. I think, our women organisation has a duty here.

...*(Interruptions)*... It is applicable here. But it is legalised. The 'Sharriyat' divorce is legalised. ...*(Interruptions)*...

SHRI K.M. SAIFULLAH (Andhra Pradesh) : Sir, we are not discussing here the Muslim Personal Law. It will give rise to complications. We know how to protect the Muslim... ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): It would be better, if we confine ourselves to the provisions of this Bill. There would be other occasions to discuss all these things. ...*(Interruptions)*...

SHRI K.M. SAIFULLAH: We know what is 'Mehar'. We have got the Dissolution of the Marriage Act. ...*(Interruptions)*... Everything is there in the Muslim Personal Law.

श्री खान गुफ़रान ज़ाहिदी : आप भी बोलिएगा। अभी उन्हें बोलने दीजिए। **...(व्यवधान)...**

SHRI V.V. RAGHAVAN: Sir, what I want to drive at is, it is high time that the women organisations raised a campaign of social reforms against these medieval customs in our society. Not only in the Muslim community, in the Hindu community also the womenfolk are suffering. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : We should try to confine ourselves to the provisions of the Bill. You have made your point. ...*(Interruptions)*... We should not digress. We should keep ourselves confined to the provisions of the Bill, because there would be other occasions when all these things can be discussed.

SHRI K.M. SAIFULLAH : On some other occasion, my friend can raise the issue of Muslim Personal Law. He has every right to talk. We will also talk, but not in this case. ...*(Interruptions)*...

SHRI V.V. RAGHAVAN: I think, it is a right occasion to raise this issue. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Raghavan, you are a very seasoned politician and a very senior Member of Parliament.

...(Interruptions)... You will have many other occasions to talk about this issue.

SHRI K.M. SAIFULLAH: You can talk about the Muslim Personal Law separately. I can also talk about it for one hour. We are doing justice to the Muslim ladies *...(Interruptions)...* I will talk. *...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): This is a very specific amendment to the *...(Interruptions)...*

SHRI K.M. SAIFULLAH: We have got 'Mehar', we have got 'Iddat'. We are giving everything to the *...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Please. I think, Mr. Raghavan is a very senior Member. He can make his point.

SHRI V.V. RAGHAVAN: Mr. Vice-Chairman, my only concern is that the medieval customs in our society are putting our womenfolk to hardships. So, here the women organisations have a duty to raise a campaign for social reforms against these medieval customs. Thank you, Sir.

SHRI GOPALSINH G. SOLANKI (Gujarat): Sir, the Law of Maintenance was introduced under Section 488 of the old Criminal Procedure Act of 1908, which was amended in 1973. But at the very initial stage, the maintenance amount was limited to just Rs. 250/-. And, in 1973, it was enhanced to Rs. 500. But there was no procedure of interim relief also under the law, and with this amendment of Section 125, the interim relief is going to be awarded. At the same time, it is said that the application for the interim relief will have to be finalised within 60 days. But, I would say that much water has flown in these 27 years. Even, in one case, where the maintenance of Rs. 200 was granted, the Supreme Court had remarked that the amount of maintenance, which had been granted, was not enough for the maintenance of a wife. They have also made a remark -- and I remember that -- "Even if a person wants to maintain a dog, he would require not less than Rs. 500. And the Act has to be amended and the amount of maintenance should be enhanced to Rs. 1500." The National Commission for Women has also demanded a higher amount than Rs. 1500. They also demanded the right for interim relief. At the same

time, the Law Commission had recommended rise in the maintenance amount to Rs.5,000. But, it was said that the Government was going to bring in another amendment to raise it to that extent. But, Sir, I would like to say that this is the Government which has offered the legitimate right, considering the rise in the cost of living and the standard of living of the applicant. That is why it has repealed the ceiling. As a result, the applicant will be able to get the amount, looking to the particular status of the woman who files the application for maintenance. This was not done, when my learned friends had objected to it to be under their personal law. At least it was a moment in Parliament when the judicial right given by the Supreme Court was taken away with some ulterior motive or pressure. Therefore, that law was changed. I do not want to say anything more about that, but that was about the Shah Bano case. With this amendment, it is not that the applicant is going to get the maintenance amount from the date the order is passed. It is very clear in the explanation given in the relevant clause that the maintenance has to be paid from the date of application and not when the order is passed by the Magistrate or court. Therefore, there is no doubt that it has to be granted from the date of the application.

I agree with the view expressed by Shri Kapil Sibal that there are many excuses for getting adjournments. If adjournments are given again and again, applications are not going to be disposed of within sixty days. They can cite reasons for not appearing before the court. Non-appearance may be wilful. Moreover, they may not accept the notice from the court, thereby delaying the case. Therefore, I would suggest that on the presentation of the petition for maintenance, which may be on behalf of the wife, on behalf of the children or on behalf of the parents, an *ex-gratia* payment as an interim relief may be granted *ex-parte* to the applicant so that they can have a space to breathe.

With these words, I support the Bill.

SHRI RAM JETHMALANI (Maharashtra): Sir, I was present in this House, not for the purpose of really speaking on this Bill, but to pay my humble tribute and compliment to the Government and the hon. Minister, who has sponsored this very wonderful piece of legislation, which was long overdue.

I propose to take only two or three minutes of the House, because some points have been raised, to which I think a reply is called for.

Yadav Saheb and Mr. Nariman raised the question of maternal home. An example of it was also given. We do not have to go to individual cases, where the daughter-in-law was thrown out of the house. I know what you have in mind. But, Sir, all problems cannot be solved by law. Most of the problems may be left to the sensitivity of the police officer, sub-ordinate judges and other judges, who are presiding over in various courts. If a widowed daughter-in-law is sought to be thrown out of the house, the nearest Police Station Officer, if he has any social sense or some sense of obligation under the law, come to the rescue of the damsel in distress. He should register a case of mischief to property and wrongful restraint from entering into the house. He should arrest the people who do it. But, the trouble is that the law becomes limp, when you are faced with influential people or with people, who think that you have not greased their palms properly. That is what is happening. Now, Mr. Kapil Sibal made a point that in an appeal, no stay should be given. ...*(Interruptions)*...

PROF. (SHRIMATI) BHARATI RAY: Will you yield for a minute? I know of a case when for the last one year, a daughter-in-law could not go back home because she was told, "You cannot enter the house." She is not able to enter the house even now. The point is, she should have the right to residence.

SHRI RAM JETHMALANI: I entirely agree with you. I am coming to that in a minute.

श्रीमती सरला माहेश्वरी (पश्चिमी बंगाल) : आप करिए ...**(व्यवधान)** ...

उपसभाध्यक्ष (श्री टी.एन.चतुर्वेदी) : आप एग्री कर रहे हैं। देखिए कितने लोग हैं आपकी मदद के लिए किस हद तक बैठे हैं। आप चिंता मत करिए ...**(व्यवधान)** ...

श्री राम जेठमलानी : आप गुस्सा मत कीजिए ...**(व्यवधान)**... At the end of my speech, you will be very happy with me. Mr. Kapil Sibal raised a question that there should be no stay because, ultimately, a money decree....*(Interruptions)*..... Mr. Kapil Sibal practices in superior courts, but a humble lawyer like me who practices sometimes in a Magistrate's court, knows exactly what happens. Sometimes, even in a subordinate court, this kind of an order has been made, which really was a killing to a husband who did not earn a pie, the wife was rich and the order of maintenance had been made. Now this is not a simple money decree. Under the Criminal Procedure Code, this order of maintenance is enforceable by

imprisonment of the husband. Now, therefore, in some very gross case why should the power of stay, in a suitable case...

SHRI KAPIL SIBAL: Reasons have to be recorded.

SHRI RAM JETHMALANI: Mr. Kapil Sibal, I think, every sensitive Magistrate, every good appellate judge, would not order a stay of execution of an order of maintenance, unless there are extraordinary circumstances. But these are matters which ought to be left to judicial discretion and judicial education.

Then, my friend raised the question of concept of matrimonial domicile, matrimonial house and matrimonial home.

SHRI GOPALSINH G. SOLANKI: The Supreme Court judgement says, "Sadhus, saints, handicapped people and beggars are not exempted from paying maintenance allowance to the wife."

SHRI RAM JETHMALANI: Sir, the doctrine of matrimonial home from which a woman cannot be evicted, has been given up by the courts in England, the courts in America and now enlightened judges in India have started enforcing this. But that is a part of the civil law. The Criminal Procedure Code has nothing to do with it. If you go to a Family Court, a judge will issue an exemption. In fact, the husbands have been prevented from entering the matrimonial homes, in the interest of the physical security of the wives. The law is developing on those lines.

श्रीमती सरोज दुबे : कितने पतियों को रोका जाता है .?

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) :छोड़िए सरोज जी, यह सब यहां के लिए नहीं है। यह तो बड़ा देश है, यहां बहुत बातें होती हैं। कुछ उदाहरण आप दे रहे हैं, कुछ उन्होंने दिए ...**(व्यवधान)** ...

SHRI RAM JETHMALANI: Now, husbands have been prevented from entering the matrimonial homes.

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : मिश्रा जी ने उदाहरण दिया कि यह सब यहां चलता रहता है...**(व्यवधान)** ...

श्रीमती सरोज दुबे : आप वकालत कर रहे हैं उन्हें बचाने की। पति की वकालत कर रहे हैं ...(व्यवधान) ...

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : आगे बढ़ने दीजिए सरोज जी ...(व्यवधान)... ये न तो बिहार की बात कर रहे हैं, न उत्तर प्रदेश की ...(व्यवधान) ...उत्तर प्रदेश की भी नहीं कर रहे हैं ...(व्यवधान) ... कहीं और की कर रहे हैं ...(व्यवधान) ...

श्रीमती सरोज दुबे : इसमें बिहार की कौन सी बात है। महिलाओं के लिए ...(व्यवधान)...

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : उत्तर प्रदेश की भी नहीं कर रहे हैं, कहीं ओर की कर रहे हैं...(व्यवधान) ... अभी इंग्लैंड की बात हो रही थी। मामला वही है मैट्रीमोनियल लॉज का ...(व्यवधान) ...

SHRI RAM JETHMALANI: So far as the speed of disposal is concerned, this is not like a criminal trial in which the presence of the accused has to be secured. Once the notice is served, the court has a jurisdiction to make all orders, a final order, an interim order. I don't know why the court should wait for 60 days. You issue a notice under Section 125; have it served properly; and, on the next date of hearing, you can proceed to make an order of interim maintenance. All that is required is continued legal education for our subordinate judiciary. Unfortunately, the method of recruitment is not proper. You cannot have remedies in the law for every problem. Ultimately, you have to improve the quality of judicial administration itself. And that is not the subject matter of this Bill. So far as it goes, this Bill is very good. The maintenance allowance of Rs.500 is a pittance. Now, sky is the limit. Now, you can go to a court and you will get maintenance within 60 days. According to me, a clever judge should be able to do within 15, or, probably even in less than 15 days. So, all these problems are solved.

SHRI KAPIL SIBAL: How many clever judges do you have in the subordinate courts?

SHRI RAM JETHMALANI: I suggest the debate in this House, on this Bill, be circulated among the subordinate judiciary.

Sir, with these words, I wholeheartedly support this Bill. I hope, we will proceed to pass it, with a word of compliment for those who have brought it before this House.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): All legal luminaries have, at least, agreed on the necessity and the relevance of the Bill.

SHRI KAPIL SIBAL: Mr. Vice-Chairman, he has not stuck to his words. He said, during the course of his intervention, that all those on this side would be very happy at the end of his intervention. I doubt very much if he has made all of them happy.

SHRI RAM JETHMALANI: Sir, doesn't he see the obvious look of happiness there?

श्री खान गुफरान जाहिदी : उपसभाध्यक्ष महोदय, कानूनी माहिर ने बिल पेश किया है और बड़े कानूनदांओं ने इसको सपोर्ट किया है। कपिल जी हैं, रहमान जी हैं, जेठमलानी जी जैसे कानूनी माहिरों ने इसको सपोर्ट किया है। लेकिन जो केसेज जमीन पर देखे गए, अदालतों में जाने का हमें मौका मिला,- आपने कहा कि 60 दिन के अंदर फैसला किया जाएगा। अब एक तरफ यह बात आयी कि रीजन यह दिया गया है कि अगर कोई एक्सट्राआर्डनरी चीज न हो तो 60 दिन के अंदर हो जाना चाहिए। लेकिन सबसे बड़ी मुश्किल इसमें यह है, मैं पूरे मुल्क के नागरिकों की बात कर रहा हूं, पूरे समाज की बात कर रहा हूं, इसमें किसी फिरके या किसी समुदाय की बात नहीं कर रहा हूं, सारी परेशानी इस बात की होती है कि आदमी जिसने डाइवोर्स किया है, उसकी आमदनी क्या है इसको तय करने में ही सारा वक्त लगता है। शादी के वक्त न कोई सर्टिफिकेट देता है, हां बढ -चढ़कर जरूर बात करते हैं कि एक लाख हमारी आमदनी है। लेकिन जब देने का वक्त आता है तो वह अपने को दिवालिया जाहिर करते हैं। जहां तक मुस्लिमों का ताल्लुक है उनमें स्टेटस का पता चल जाता है, मेहर से पता चल जाता है कि दोनों का स्टेटस क्या है। लेकिन यहां पर हमारे और भाइयों की शादी के वक्त, हमारी बहनों की शादी के वक्त इस बात का, उनके स्टेटस का सही तौर पर पता ही नहीं चल पाता। यह बात और है कि मेंबरान पार्लियामेंट की सैलरी के बारे में आजकल पब्लिक में डिसकसन हो रहा है और वह लोग डिसकस कर रहे हैं जो अपनी आमदनी छिपा रहे हैं। कमाल है। ऐसे ऐसे लोग टीवी पर कमेंट कर रहे हैं जिनकी आमदनी एक लाख, दो लाख, चार लाख रुपया महीने होगी और कमेंट कर रहे हैं कि साहब मेंबर पार्लियामेंट की तनख्वाहें तिगुनी हो गई। तो जहां तक मेंबरान पार्लियामेंट का सवाल है उनका तो पता चल जाएगा लेकिन आमतौर से लोग अपनी सैलरी छिपाते हैं, अपनी आमदनी छिपाते हैं। जब डाइवोर्स का वक्त आता है तो छिपाते हैं और जब शादी का वक्त आता है तो बढ़चढ़कर बताते हैं। यह एक अजीब इत्तफाक है। यह समाज के लिए एक बड़े दुख की बात है, जिसकी तरफ मैं इशारा कर रहा हूं। हमारे समाज में यह है कि चाहे आप डाइवोर्स करो, चाहे कुछ करो, उसको प्रोपर्टी में हिस्सा मिलेगा इसे जेठमलनानी जी जानते हैं।

हर बीबी का हिस्सा शौहर की जायदाद में से है और हर बेटी का हिस्सा बाप की जायदाद में है। लेकिन उससे भी काम नहीं बन रहा है। आप यह एक अच्छा बिल लाए हैं, इसमें कोई दो राय नहीं है। इस बिल को मैं दिल से सपोर्ट करता हूं। इससे यह फायदा होगा कि आज जिस तरह से केसेज की तादाद बढ़ रही है उस पर रोक लगेगी। शादियों की तादाद अब कम हो रही है और यह इसलिए हो रही है क्योंकि आमदनी, आर्थिक दशा लोगों की खराब हो गई है। एज शादी की बढ़ रही है वरना शुरू में 18 साल की उम्र में शादी हो जाती थी। अब, 25, 30 और इससे ज्यादा साल हो गई है और अब 30 का एवरेज आ रहा है। जब शादी की एज का यह सिलसिला हो गया है तो मेरा कहना यह है कि इस बारे में कोई ऐसा बिल लाया जाए जो समाज में सुधार लाने के लिए हो। खासतौर पर महिलाओं के साथ जो जब्र चल रहा है, मर्द प्रधान समाज में वह जो बराबरी के दर्जे की तरफ बढ़ रही है, उस बराबरी के दर्जे की तरफ बढ़ने के लिए यह बिल दो चार कदम तो है लेकिन यह इसके लिए पुण्य कदम नहीं है, यह मेरा कहना है। मैं यह चाहता हूं किसी सूरत से ऐसी स्थिति पैदा की जाए जिससे यह पता चल जाए कि जैसे उन देशों में जहां लड़कियों को पैदा होते ही मार डाल जाता था, सैफुल्ला साहब समझ रहे होंगे, जहां लड़की पैदा होते ही मार डाली जाती थी, मंत्री जी, यहां आज यह सूरतेहाल है समाजिक सुधार की, उसमें शरय की जरूरत नहीं पड़ रही है, जिसका जिक्र हमारी साथी ने किया बल्कि यह हो रहा है कि लड़का तब शादी कर सकता है, यह जजबाती रिश्ता है, जजबाती मामला है बाप कहता है कि आपके लड़के की शादी तब होगी जब मकान खरीदेगा। आप देख रहे हैं साहब, अगर सुनना चाहते हैं तो ...**(व्यवधान)**...

उपसभाध्यक्ष (श्री टी.एन.चतुर्वेदी) : अभी दूसरा बिल भी है डाइवोर्स का..

श्री खान गुफरान ज़ाहिदी : बहुत अच्छा, डाइवोर्स नहीं, उसके बाद कुछ और बिल है, उसको इनफोर्स करेंगे। मैं सिर्फ इतना ही बताने जा रहा हूं एक इनफारमेशन के तौर पर समझिये कि वहां पर अब शादियां समाजी जरूरत के हिसाब से, समाज के दबाव में हो रही हैं कि लड़के की शादी तब होगी जब वह मकान बना लेगा और मकान बनाने के बाद शादी होगी जब वह उस घर में जाएगा तो उसमें उसकी हिस्सेदारी होगी। यह एक जरूरत है। अगर इस तरह की जरूरतें हो जाएं तो न निकाला बैठाली हो, न कुछ हो। मैं इस सिलसिले में इस बिल की पुरजोर हिमायत करता हूं। हमारी महिलाओं को दिये जाने वाले हकों की जानिब कुछ कदम हैं, लेकिन यह कुछ कदम हैं, ऐसा मैं नहीं मानता हूं इसमें अभी बहुत जरूरत है। साथ साथ आप एक मिनिमम पांच सौ रुपये का स्लैब जो है इसमें आप जानते हैं अदालतें क्या कह रही हैं। अभी जेठमलानी साहब ने इशारे में कहा 501 कर देंगे तो क्या करेंगे.? इसलिए मिनिमम कोई चीज़ कर दें कि इससे कम नहीं होगा। आज स्थिति क्या है कि मिनिमम पावर्टी लाइन के हिसाब से कर दें कि इससे कम नहीं होगा। बड़ी अजीबोगरीब सूरतेहाल है आपने नीचे से पांच सौ रुपये की लिमिट को हटा दिया, वह बढ़ सकती है, इसमें कोई दो राय नहीं हैं लेकिन इसको कहीं नीचे से करना चाहिये ताकि पावर्टी लाइन के नीचे न कर दें। कुछ भी कर सकते हैं मेजीस्ट्रेट, आप देख लीजिये, क्या हो रहा है। मैं इन अल्फाज़ के साथ पुरजोर हिमायत करता हूं। यह जो कदम आगे बढ़ रहे हैं समाज सुधार के सिलसिले में शादी विवाह के मामले में जो नारीमन साहब ने जिक्र किया, कपिल सिब्बल जी ने जिक्र किया, राम जेठमलानी जी ने जिक्र किया, इन सब की भावनाओं को समझते हुए मैं समझता हूं कि अरुण जेटली साहब बिल बनाने में बहुत तेजी दिखा रहे हैं,

काफी बिल आ रहे हैं, एकदम दनादन बहुत तेजी से बिल आ रहे हैं, कुछ ऐसे बिल लाएं जिसमें समाज सुधार के कुछ फैसले हों शादी शुदा को बेहतर जिन्दगी मिले और जो तकलीफों के मरहले हमारे सामने आते हैं, जो मुसीबतों के सवाल खड़े होते हैं, वह सवाल खड़े न हों। शुक्रिया।

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : शुक्रिया। Now, I think, we have another Bill, the Indian Divorce (Amendment) Bill, 2000. Most of the Members have already spoken, because, the two Bills are of the very allied nature. I think, two Members, who have not been able to speak, will have the chance.

Now, Shri Arun Jaitley.

SHRI ARUN JAITLEY : Sir, I am extremely grateful to the hon. Members who have supported this Bill and who have also made a large number of suggestions in relation to what else is required to really protect the rights as far as women are concerned. I may just clarify that there are several issues on which our laws are still lacking. It was mentioned that on the pattern of legislations abroad or even judge-made laws abroad, the whole concept of matrimonial house is still to develop. It was only two years ago, for the first time, that the Supreme Court said that the right to residence is also a part of maintenance, and therefore, when you award maintenance, keep in mind that it is not merely for the food or the clothing of the lady that it is required, but the right to residence is also a part of the maintenance. Therefore, there is a large distance that we have to cover in bringing our laws, particularly, civil laws and personal laws, at par with what they should be in an ideal situation. Yesterday, in the course of the discussion on the other Bill, a question was raised that there are several cases where actual incomes are concealed, and where actual incomes are concealed, our judges, who interpret those laws and pass orders, are all expected that they have already developed the whole lot of defence.... and they do not confine themselves merely to the certificates which are placed before them but they also look beyond the certificates, as to the requirement, the life-style and the other relevant factors which are required for the purposes of this law itself. Sir, this is a specific law we are dealing with, Section 125. I wish, as we always do suggest in the course of discussions, that there should be comprehensive legislations. But comprehensive legislations which will resolve and solve all problems are, probably, still a far cry, and, therefore, while we must take all these suggestions into account and look forward those comprehensive legislations

or, at least, certain specific legislations which, step by step, will also aid these rights which we are trying to strengthen, but it is equally important that what appears to us today to be inadequacies in our law or aberrations in our law are suitably checked so that the rights could be strengthened.

One great advantage of Section 125 would be that whereas in all civil laws and personal laws except with regard to the Adoption and Maintenance Act, there had to be a matrimonial dispute. The matrimonial dispute could be in relation to a divorce case, in relation to restoration of conjugal rights or a matrimonial dispute in which the judge would get jurisdiction to pass an interim order or a final order with regard to the maintenance. Therefore, there must be some element of discard between the wife and the husband, in which the jurisdiction to pass these interim orders would arise, and they would become final orders after the matrimonial proceeding is disposed of. Section 125 is, however, different. This was a law to make sure that any section of society, particularly the three specified sections--the aged parents, the young children and the wives--are not driven to any form of destitution by the earning hand who is expected to support them, and this earning hand must be compelled to prevent any form of starvation and any form of destitution, and this was an assistance not arising out of any personal law provisions, but arising out of the criminal law provisions where under the Criminal Procedure Code, a magistrate would have the power. So, in one sense, section 125 is different like its predecessor sections 488 where there need not be a matrimonial dispute, there need not be a divorce petition, there need not be any other petition of discard between the wife and the husband. The wife and the husband may be actually living together, maybe, with strained relations. The parents may be living with the son. But in case they felt that they were not being adequately maintained, all that they had to do was to go to the nearest magistrate. They do not have to go to the district courts because in tehsils you find even the district courts are at a reasonable distance. They could go to the nearest magistrate within whose jurisdiction they reside. All that they are required to do is a two-page application saying, "We have no resources. The man's life-style is this, his earnings are this." And the magistrate would pass orders in support of the wife, children and parents. The difficulty, however, arose that the cost of living increased, and for the last 46 years we pegged this amount at an outer limit of Rs.500/-. This Rs.500/- was considered inadequate, and since the magistrate has no jurisdiction to award any amount beyond Rs.500/-, people started, wife,

children started approaching civil courts in substantive proceedings, and this proceeding has no longer been resorted to with the same kind of efficacy as it should have been resorted to. It is with this objective that we considered the recommendations of the Law Commission. The Law Commission and various other organisations, in fact, had demanded or suggested that a cap of Rs.5,000/- be placed there. While we were considering it, a serious suggestion came, "Is there a necessity for a cap because in the present day world, for a given household, Rs.5,000/- or some thing lesser than that may be enough for a lady, but there would still be houses where Rs.5,000/- would be inadequate because the husband's life-style and income would actually necessitate that he pays much more than this amount of Rs.5,000/-?" Since it is a very cheap remedy, it is an efficacious remedy, it is available even in the rural areas, in every tehsil, we decided not to keep any upper limit, and, therefore, a quick remedy is possible.

Some other suggestions have been made. Even though maintenance covers residence, I think, at some stage, we will require a larger debate in this House. We have also studied the personal laws and the family laws elsewhere in the world. There are orders of protection against any kind of physical assaults. There are orders passed in relation to the right to live in a residence. There may be situations, I mentioned yesterday, where it may be safer for the wife to either live in the residence or ask the husband to go out or the wife to be provided with some monitary compensation for the house in which she is to live in because her safety may be at stake, if she lives with her husband. These are all variables, depending on a given situation. But the law should move forward, by including in its ambit all the directions which are required. Mr. Jethmalani has suggested that this being a penal law provision, with a provision for appeal, we do hope and we do expect our judges, who are a judicially trained mind, and the higher courts would lay down strict guidelines in this regard and ensure that, as far as the time-tables are concerned, they are adhered to. I can see Mr. Kapil Sibal is little unhappy, and I can share that feeling. This phrase "as far as possible" at times give a leeway or even delays a procedure. It is quite possible, that could happen. This is a legislative intent that we are indicating. When Mr. Jethmalani, on an earlier occasion, brought a law, which the Standing Committee approved, which had in it a fixed time, almost a uniform objection was raised, "Why have you not given some leeway to the court to go beyond that period?". Then we said

ourselves, "Let us start reconsidering that law". Therefore, the ideal situation, we thought, under the circumstances, was to give a legislative intent that this should be done within 60 days, as far as possible. This is the guiding factor, as far as the legislature is concerned. We expect our courts also to perform their duty under the Constitution and under the law. Certainly, as regards the suggestion which Mr. Sibal has made that there should be some guideline, if you want to go beyond that period, for some reason, that period is not possible, then, certainly, you must record the reasons why you are not able to dispose it of within the period of 60 days. I do understand that even within the present law, if a court wants, in an extraordinary situation, to pass an *ex parte* order, there is nothing which debars it. When there is a power to pass an interim order, certainly, it has also the power to pass any order which precedes that interim order, because an interim order can also be an *ex parte* order, in the sense, that the lady is on the road and she has no resources even to have two meals a day. Therefore, the courts can give one or two days' notice to the husband and pass this kind of an order because these are all orders which the area Magistrate has to pass. The jurisdiction is actually decentralised at that level.

With regard to passing of stay orders, we have increased the upper limit. There is today no cap. Certainly, if somebody wants to intervene by way of any stay order in the appeal proceedings, the courts would have to consider various factors; the kind or resources to which the wife is entitled, the resources of the husband, etc. Certainly, all these are going to be guided by judicial discretions and all judicial discretions need not be narrowed, as far as this legislation is concerned, because the consequences of non-payment under this law are far more sever than the consequences of non-payment under the civil law. The consequence of non-payment here is not only a recovery warrant, but also, the husband is going to the jail; or the son or the father is going to the jail. Therefore, there is an element of judicial discretion as to how these are to be implemented, which would also have to be left to the courts. I am sure, the higher courts, when they interpret these laws, would, certainly, give an interpretation and guidance, which would be a guiding factor, as far as the subordinate courts in the country are concerned.

A question was raised that even with regard to interim orders, we were giving powers to vary and alter those interim orders. The main

proceedings may take years. The interim order is expected to be passed within 60 days. But during the pendency of the proceedings, the requirements of the wife may increase; the income and the resources of the husband may increase; the demands of the children may increase. There may be a case of medical assistance, which is required. Therefore, if anybody wants to go to a court and ask for variation of an interim order, we cannot shut out the judicial discretion, as far as the variation of the interim order in respect of the payment is concerned, depending on the change in the circumstances.

SHRI K.M. SAIFULLAH: Sir, I want to seek one clarification. As regards the enhancement of the maintenance, it is good. But you have failed to mention that the illegitimate child is not entitled to maintenance. When you are having this Divorce Act and everything, why are you not eliminating the illegitimate child from getting maintenance? *...(Interruptions)...*

SHRI KAPIL SIBAL: Why should the illegitimate child be deprived of it? It is not the fault of a child that he is illegitimate. Why should he be not entitled to maintenance? *...(Interruptions)...* Just now that is the settled position.

SHRI K.M. SAIFULLAH: Then you can say the kept mistress is also entitled to maintenance. *...(Interruptions)...*

SHRI ARUN JAITLEY: I am glad that you have raised this question. The object of the law is not linked to any particular religious denomination or any other family factor or property. The object of this law not being a civil law provision and being a criminal law provision, is to prevent any form of destitution and starvation. We cannot, while making a social welfare legislation move on the presumption that because somebody has been born out of an illegitimate relationship between his or her parents, this child could be put to a situation where the child starves and the law is helpless in the matter. This is not a distinction which ever would be available to a law of this kind. I don't think section 125..*(Interruptions)...*

SHRI K.M. SAIFULLAH: We have got all sympathy for the illegitimate children. Why can't they give same preference to the kept mistress? She is also a woman.

SHRI FALI S. NARIMAN: The House must be aware that according to article 15(3), it is a Constitutional mandate to make special provisions for women and children. The Minister has come forward with this Bill in pursuance of that article. Therefore, anything that is done in furtherance and special provisions for women and children must always be encouraged, whether the children are legitimate or illegitimate.

SHRI KAPIL SIBAL: Now the judge-made law allows maintenance to an illegitimate child. No legislation is required for that. That is the law of our country today.

SHRI ARUN JAITLEY: Sir, a large number of valuable suggestions have been made. I quite concede that this is a small, but a very significant step which we have taken in removing the upper cap in trying to fix the time limit. I am sure this House will again, on a substantive issue, get to re-discuss these issues. As we evolve, with the kind of evolution of these laws, certainly a number of suggestions with regard to specific provisions for residence, matrimonial homes, are all challenges which we will have to accept for the future, when we legislate. I now propose this hon. House to pass this Bill.

SHRI KAPIL SIBAL: Sir, I have requested the hon. Minister to consider that maintenance should be granted not from the date of the order by the learned judge or from the date of application, but from the date the woman is entitled to maintenance because she is destitute from that date, not from the date of the application or the order.

SHRI ARUN JAITLEY: Sir, we had considered this factor when we were drafting the Bill. The object of this law is really to prevent any form of destitution and starvation. Since this law is applicable for that particular purpose, from the date the lady comes and moves an application, she is entitled to all her expenses. Even in civil law of maintenance, if you check up, the orders of maintenance are all passed, the earliest date being the date of application and not the date on which they started living separately. Sir, when we take a larger view of these laws, we will certainly take these questions into consideration. But ...*(Interruptions)*...

SHRI KAPIL SIBAL: The woman may already be a destitute before she moves a court of law or the aged parents may be destitute before they

move a court of law. Therefore, I urge upon the hon. Minister ...*(Interruptions)*...

SHRI ARUN JAITLEY: Sir, I quite appreciate the suggestions he has made. We will keep these suggestions in mind when we further deal with the personal laws and also the criminal laws in regard to maintenance. But the current purpose of this law is to prevent starvation and destitution and, therefore, there has been a legislative reason why in these laws the maintenance becomes applicable from the date of application. When we discuss this on a larger plane with regard to personal laws, we can certainly take that as a possible view.

SHRI KAPIL SIBAL: The previous amendment took 45 years. It is a law of 1955 which we have changed today. The next piece of legislation will take another 20 years. At least, the Minister should say that within a course of one year, he would look into this matter and come back to the House. He can give this much assurance to the House.

SHRI ARUN JAITLEY: We will certainly look into this particular issue But currently, as I said...

SHRI FALI S. NARIMAN: Including the issue of matrimonial!

SHRI ARUN JAITLEY: We will look into these issues.

SHRI KAPIL SIBAL: We will support you. This is a non-partisan issue. We will give you full support.

SHRI ARUN JAITLEY: Sir, we will look into all the issues. But please bear in mind the current situation. We cannot start amending the law in a huff.

We have to consider this. The current position in all Personal Laws has been that it is the date of application. If we have to make a change, we will make a change across the board.

SHRI KAPIL SIBAL: That is clearly unfair.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : We shall now take up clause-by-clause consideration of the Bill. On Clause 2, there is one amendment by Prof. (Shrimati) Bharati Ray. Would you like to move the amendment, or, after listening to the assurances that the larger things will be considered...

PROF. (SHRIMATI) BHARATI RAY: Sir, I have an amendment. I would agree with the Minister that social legislations cannot really remove social problems, but the first step is the law. If it is there, it is helpful. I am satisfied with the Minister's reply, but I will not move my amendment, if the Minister agrees that he will look into the suggestions, particularly, on matrimonial homes and protection order, and the point made by Shri Kapil Sibal, and try to bring a more comprehensive law, as soon as possible.

SHRI ARUN JAITLEY: It is such a worthy suggestion that nobody can say that he won't look into it.

PROF. (SHRIMATI) BHARATI RAY: Try to bring a comprehensive law very soon. On that assurance, Sir, I don't press my amendment.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The Minister has used the words 'as soon as possible'.

The question is:

"That clause 2 stands part of the Bill."

The motion was adopted.
Clause 2 was added to the Bill.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Then, there is one amendment for insertion of a new clause 2(A), by Prof. (Shrimati) Bharati Ray. Are you moving it?

PROF. (SHRIMATI) BHARATI RAY: No, I am not moving.

Clause 3 was added to the Bill.

6.00 P.M.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Then, on clause 4, there is another amendment, by Prof. (Shrimati) Bharati Ray. Are you moving it?

PROF. (SHRIMATI) BHARATI RAY: Sir, I am not moving it.

Clause 4 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI ARUN JAITLEY: Sir, I move:

"That the Bill be passed."

The question was proposed.

SHRIMATI SARLA MAHESWARI: Sir, I had given notice of an amendment. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): There was one amendment by Smt. Sarla Maheshwari. Mrs. Sarla Maheshwari, would you like to move your amendment?

SHRI PRANAB MUKHERJEE: Sir, the Minister has already moved: "That the Bill be passed." Now, it is at the third reading stage. We can't go back.

श्रीमती सरला माहेश्वरी : मैं भी यही चाहती हूं कि मंत्री जी आगे की ओर बढ़ें, पीछे की ओर न जाएं।

SHRI PRANAB MUKHERJREE: They can't be moved at the third reading stage.

श्रीमती सरला माहेश्वरी : उपसभाध्यक्ष महोदय, हमारे गृह मंत्री जी ने इस संशोधन विधेयक के संबंध में बहुत सी बातें कहीं और हमारे माननीय सदस्यों ने उन पर अपने विचार व्यक्त किए। मुझे खुशी है कि हमारे सभी विधि विशेषज्ञ यहां पर मौजूद थे। पता नहीं इस सदन के बाहर ऐसे विधि विशेषज्ञ हैं या नहीं। अगर इस तरह के विधि विशेषज्ञ बाहर मौजूद होते तो शायद स्थिति कुछ पलटती। बहरहाल, मैं यह कहना चाहती हूं कि मैंने इसमें कुछ संशोधन पेश किए हैं।

महोदय, सभी लोगों ने माननीय मंत्री जी का स्वागत किया लेकिन मैं स्वागत करते हुए यह कहकर इनका इस्तकबाल नहीं कर सकती कि देर आयद दुरुस्त आयद क्योंकि यह नौ दिन चले अढाई कोस वाली स्थिति है। महोदय, 1974 में स्टेटस कमेटी ने यह अनुशंसा की थी कि यह जो गुजारे-भत्ते की राशि है, इसको बढ़ाया जाए और इसके बाद आज 28 वर्ष हो गए हैं, अब आप यह विधेयक लेकर आए हैं। आप यही कह रहे हैं कि आप इन संशोधनों को प्रैस मत कीजिए, मैं पूरा बिल लेकर आऊंगा। मेरी इच्छा तो होती है कि मैं आप पर ऐतबार करूं लेकिन मुझे गालिब के शब्दों में यही कहना पड़ता है कि "खुशी से मर न जाते, गर ऐतबार होता"। तो ऐतबार तो है नहीं। इसीलिए मैं यह कहना चाहूंगी कि वास्तव में हमारे संविधान की उद्घोषणाएं एक तरफ हैं, संविधान के मूलभूत अधिकार एक तरफ हैं और संविधान की उद्घोषणाओं और मूलभूत अधिकारों का महिलाओं के कानूनों से, हमारे निजी कानूनों से कोई तारतम्य नहीं है। इसीलिए हमारे माननीय सदस्यों ने इस बारे में अपने सुझाव रखे हैं और मैंने भी उसी तरह का एक संशोधन रखा है।

महोदय, हमारे मंत्री जी ने कानूनी परिभाषा मुझे समझाई। मैं कानूनी परिभाषा में नहीं, जीवन की परिभाषा में बोलना चाहती हूं कि हकीकत यह है कि आप कहते हैं कि "as far as possible". उपसभाध्यक्ष महोदय, हालत तो यह है कि महिलाओं के संदर्भ में जो संभव होता है, वह भी असंभव हो जाता है। जैसा अभी यहां हो रहा था मेरे साथ। प्रणब दा कह रहे थे कि अब आप नहीं बोल सकतीं।

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : उसके लिए तो मैं क्षमाप्रार्थी हूं। कागजों के मिक्स-अप होने की बात तो मैं नहीं कह सकता, लेकिन व्यक्तिगत तौर पर मैं उसके लिए क्षमाप्रार्थी हूं।

श्रीमती सरला माहेश्वरी : महोदय, मैं विधि मंत्री जी से कहना चाहूंगी कि आपने इसमें 60 दिन का प्रावधान रखा है लेकिन मैंने 30 दिन का प्रावधान सजेस्ट किया है। मैं चाहती हूं कि यह "as far as possible" हटाकर आप 30 दिनों के अंदर इसका निपटारा करें क्योंकि यह औरतों के लिए बहुत ही परेशानी का कारण बन जाता है। वे न तो बार-बार अदालतों के चक्कर काट सकती हैं और न उनके पास इतनी सुविधाएं होती हैं। आप कह रहे हैं कि जिस दिन से वे निराश्रित हुईं, उसी दिन से उनको गुजारे-भत्ते की राशि मिलनी चाहिए लेकिन वह भी कानून की परिभाषा में संभव नहीं है। इसलिए मेरा आपसे निवेदन है कि आप 30 दिनों के अंदर इसका निपटारा करें।

उपसभाध्यक्ष महोदय, मेरे 2 संशोधन और हैं। यदि आप कहें तो मैं उनके बारे में अभी बोल देती हूं।

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : आपका एक ही संशोधन है।

श्रीमती सरला माहेश्वरी : महोदय, मेरे 2 संशोधन और हैं। एक संशोधन के बारे में तो किसी ने कुछ कहा ही नहीं है।

उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) : ठीक है, आप उन पर भी बोल दीजिए।

श्रीमती सरला माहेश्वरी : उपसभाध्यक्ष महोदय, मंत्री जी ने यह कहा कि पति की आमदनी क्या है, उसकी आमदनी के क्या स्रोत हैं, उसका जीवन-स्तर किस तरह का है, इन तमाम चीजों को गुज़ारा-भत्ता तय करते समय अदालत ध्यान में रखेगी। मेरा यह कहना है कि आम तौर पर यह जिम्मेदारी महिलाओं को सौंप दी जाती है कि आप साबित करिए और महिलाओं के लिए इसे साबित करना संभव नहीं होता। इसलिए इसकी जिम्मेदारी पति पर होनी चाहिए कि उसकी इनकम क्या है, उसका जीवन-स्तर किस तरह का है, इनको वह अदालत के सामने साबित करे। महोदय, ये तमाम चीजें मैंने अपने संशोधन में गिनाई हैं कि गुज़ारा-भत्ता तय करते समय इन-इन कसौटियों का ख्याल रखना चाहिए। आप इन्हें मान लीजिए। तीसरा मेरा यह है जिसके बारे में सुप्रीम कोर्ट ने और कई अदालतों ने अपनी राय जाहिर की कि आम तौर पर यह होता है और हमारा जो पितृसत्तात्मक समाज है और इस पितृसत्तात्मक समाज और सामंती समाज के जो मूल्य हैं वे मूल्य इतने स्त्री विरोधी हैं कि समाज में स्त्री के लिए सम्मान के साथ में, इज्जत के साथ में अपनी जिंदगी जीना बहुत मुश्किल है और इसीलिए हर बार किसी औरत के लिए संभव नहीं होता। अक्सर अपने समाज में हम यह देखते हैं कि किसी व्यक्ति के घर में उसके साथ एक औरत रह रही है, भले ही परम्परागत रूप से उसकी शादी नहीं हुई हो और न ही उसके पास में शादी होने का परम्परागत सबूत ही हो, लेकिन इसके बावजूद समाज की नजरों में वह पत्नी की हैसियत से रह रही है। तो इसलिए उसको भी पत्नी का दर्जा दिया जाना चाहिए। मैं यह आशा करुंगी कि हमने और हमारे माननीय सांसदों ने और दूसरे हमारे नारीमन साहब ने भी जो सुझाव रखे हैं उन पर हम चाहते हैं कि आप इस सदन में यह आश्वासन दें, क्योंकि उसका तो आप समय नहीं बता रहे हैं लेकिन इसके लिए कृपया हमें समय बता दें कि आप दो महीने बाद, तीन महीने बाद एक सम्पूर्ण बिल लेकर कब आ रहे हैं इन तमाम मुद्दों को समेटते हुए? तो इस पर आप हमें आश्वासन दे दीजिए।

श्री अरुण जेटली : उपसभाध्यक्ष महोदय, यह विषय ऐसे हैं कि जिस पर समाज को चिंता होनी चाहिए और निश्चित रूप से इन विषयों के ऊपर क्योंकि कई सुझाव सदन मे आए हैं, बाहर से भी आ रहे हैं, तो इस प्रकार के कानूनों में जब सुधार होगा तब इन सुझावों को हम मद्देनजर रखेंगे।

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Now, the question is:

"That the Bill be passed."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): There is another Bill to further amend the Indian Divorce Act, 1869. ...*(Interruptions)*... This is only to be moved. ..*(Interruptions)*...

SHRI PRANAB MUKHERJEE: All right. Let him move the Bill. Thereafter we can take up the statement by the Minister and then you can adjourn the House. ..*(Interruptions)*...

3195RS

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): That is all right ...*(Interruptions)*...

SHRI ARUN JAITLEY: Sir, may I suggest before I formally move the Bill, because I think amongst all these legislations, this, perhaps, is the most important one. It has taken the Indian Parliament to come to a consensus and the various connected people to agree to this reform a period as long as 50 years. Therefore, it is important that we pass this Bill in this Session in both the Houses. Since I have only five days thereafter left in the next week for this Session -- and if you keep the Fridays out, this period will be only four days -- my request would be that this Bill is passed this week itself so that I am able to take it to the Lok Sabha next week for its approval.

SHRI PRANAB MUKHERJEE: We will past it on Monday. ...*(Interruptions)*... You will get it. ...*(Interruptions)*...

SHRI ARUN JAITLEY: May I suggest because it is not a Bill which is going to involve a very long debate because most of the items have unanimous recommendation of the Standing Committee, we can, if Members agree, sit for half-an-hour or one hour, depending on what the Members feel ..*(Interruptions)*... Or we can sit after the Private Members' Business.

SHRI PRANAB MUKHERJEE: I assure the hon. Minister that we will take it up on Monday. There will be no problem. He will have Tuesday, Wednesday and Thursday to get it passed in the Lok Sabha.

SHRI ARUN JAITLEY: Sir, then I will just move the Bill. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You can move it. ...*(Interruptions)*...

THE INDIAN DIVORCE (AMENDMENT) BILL, 2000

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND THE MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I move:

> "That the Bill further to amend the Indian Divorce Act, 1869 be taken into consideration."